Filed 7/21/09 Marriage of Taylor CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re Marriage of JANICE and LAWRENCE N. TAYLOR.	B195226 (Los Angeles County Super. Ct. No. BD345777)
JANICE L. TAYLOR, Appellant, v. LAWRENCE N. TAYLOR, Appellant.	

APPEALS from orders of the Superior Court of Los Angeles County. Frederick C. Shaller, Judge. Affirmed in part and reversed in part and remanded with directions.

Law Offices of Marjorie G. Fuller, Marjorie G. Fuller, Lisa R. Wiley; Kolodny & Anteau, Steven A. Kolodny, William Glucksman and James Dooley for Appellant Janice L. Taylor.

Horvitz & Levy, Lisa Perrochet, Jeremy B. Rosen; Greenberg Traurig, Eric V. Rowen and Richard K. Welsh for Appellant Lawrence N. Taylor.

* * * * * *

Appellant Lawrence N. Taylor (Lawrence) and appellant Janice L. Taylor (Janice) have appealed multiple orders entered by the trial court following their July 2003 judgment of dissolution.[1] Initially, the trial court ruled that Lawrence, alone, was responsible to pay taxes on sales proceeds received before July 2003 by partnerships that were awarded to him as his separate property. The trial court directed the parties to meet and confer to determine the precise amount of tax owed. As a sanction against Lawrence for failing to pay those taxes, it also permitted Janice to file the judgment. It declined to find, however, that Lawrence had breached his fiduciary duty by failing to disclose those sales prior to dissolution. Both parties appealed. Thereafter, Lawrence declined to meet and confer or to pay the amount of tax calculated by Janice. On Janice's motion, the trial court ordered Lawrence either pay the tax or post a bond, and imposed sanctions. Lawrence appealed.

We affirm in part and reverse in part. We find no merit to Lawrence's challenges to the order requiring him to pay taxes and the order imposing sanctions for his failure to pay those taxes as ordered. We cannot conclude, however, that substantial evidence supported the trial court's finding no breach of fiduciary duty. The partnership transactions that occurred during the dissolution proceedings were material and thus Lawrence had a continuing duty to update and augment his earlier disclosure to include them. Lawrence failed to do so. Accordingly, we must remand the matter to enable the trial court to determine the sanctions that should be imposed for Lawrence's breach of fiduciary duty.

FACTUAL AND PROCEDURAL BACKGROUND

The Parties' Marriage, Separation and Dissolution Proceedings.

Lawrence and Janice married on August 30, 1983 and separated on May 8, 2001. At the time of separation they had two minor children. Lawrence was a successful real

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[1] "As is customary in family law cases, we refer to the parties by their first names for purposes of clarity and not out of disrespect." (*Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 828, fn. 2.)

estate developer, property manager and syndicator of limited partnerships. During the marriage, Lawrence and Janice acquired significant interests in real estate limited partnerships.

Janice petitioned for dissolution on May 9, 2001. In December 2002, Lawrence submitted a final declaration of disclosure (Final Disclosure). Included within the Final Disclosure were Lawrence's interests in multiple limited partnerships; among those listed were a 20 percent interest in Reeves Estates valued at $195,669.56, a 20 percent interest in 14th Partners valued at $468,084.42, a 14.9 percent interest in 15th & Montana Prof. Bldg. valued at $286,640.75, a 15 percent interest in Sweet Sixteen, Ltd. valued at $199,696.77 and an unspecified interest in LNT 1987 Investments valued at $18,846.41 (sometimes collectively the five partnerships).[2] The Final Disclosure identified assets totaling $18,416,372.78, less encumbrances in the amount of $6,903,464 and debts in the amount of $5,476,676.46, for a total of net assets valued at $6,036,232.32.

Between December 2002 and May 2003, the five partnerships sold real property assets. In particular, as of October 25, 2002, Lawrence, as general partner of Reeves Estates, had received an offer to purchase the property owned by the entity for $6.6 million; he ultimately accepted that offer and signed a grant deed on December 20, 2002, and escrow closed on January 7, 2003. Nonetheless, in correspondence dated January 8, 2003 in response to an inquiry from Janice's counsel, Lawrence's counsel wrote that he was "not aware of any changes required to be made to Mr. Taylor's Final Declaration of Disclosure that was served on December 16, 2002." That the property owned by Reeves Estates was in escrow for $6.6 million was not mentioned in the Final Disclosure.

While Lawrence averred that he verbally informed Janice of the Reeves Estates transaction in January 2003—conceding that he did not inform her of the other transactions—Janice asserted that Lawrence did not tell her about any of the transactions.

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[2] The entity "Reeves Estates" had not been listed on a prior schedule of assets and debts that Lawrence had filed in support of his March 2002 opposition to Janice's motion for interim support.

During settlement negotiations in January 2003, Janice expressed concern that Lawrence did not have funds available to make a proposed equalizing payment of over $1 million. On January 24, 2003, Lawrence presented Janice with a letter to him signed by John Gervais (Gervais) of City National Bank which stated in its entirety: "Upon your direct instructions, City National Bank is prepared to issue an Official Check payable to Janice L. Taylor in the amount of $1,074,333.34 (US) for messenger delivery to Janice L. Taylor, in the City of Los Angeles, during normal business hours on Friday, January 24, 2003."

Settlement negotiations fell through, and Janice proceeded to litigate contempt proceedings she had previously filed in March 2002 to enforce Lawrence's interim support obligations. In connection with those proceedings, Janice served a subpoena on Gervais and City National Bank. Though Lawrence moved to quash the subpoena, City National Bank provided a document that reflected two accounts held by Reeves Estates containing a combined balance of $2,455,436; the document was attached to the Gervais letter indicating that Lawrence had funds available for the approximate $1 million payment. At that point Janice also learned that Lawrence was the general partner of Reeves Estates. On March 14, 2003, the trial court granted Janice's motion to freeze the Reeves Estates accounts and restrain City National Bank from releasing any of the funds contained therein. In April 2003, Gervais testified at the contempt hearing, stating he was unable to identify the source of the funds in the Reeves Estates accounts on the basis of the subpoenaed documents.

Between March and May 2003, the five partnerships made distributions to Lawrence as a result of real property sales: Reeves Estates distributed $895,260 on April 7, 2003; 14th Partners distributed $660,000 on March 28, 2003; 15th & Montana Prof. Bldg. distributed $366,210 on May 5, 2003; Sweet Sixteen, Ltd. distributed $405,000 on March 25, 2003; and LNT 1987 Investments distributed $26,190 on March 31, 2003. Janice was unaware of the distributions at the time they were made and did not learn of them until over one year later.

Judgment of Dissolution.

A judgment of dissolution was filed on July 3, 2003, in the form of a stipulated judgment that incorporated a marital settlement agreement (Stipulated Judgment) negotiated by the parties and approved by the court. The Stipulated Judgment resolved all outstanding disputes in the dissolution proceeding, including the contempt proceedings. The parties identified and confirmed their separate property and separate obligations; identified their community or co-owned property and joint obligations; and set forth their agreements concerning spousal support, child support and child custody.

The Stipulated Judgment specified that the parties' "earnings, accumulations and obligations [of Lawrence or Janice] from and after May 8, 2001" were separate property. Specifically, "[a]ll monies, income and earnings accruing to, or received by [Lawrence or Janice] after May 8, 2001, and all property of any kind or description whatsoever and in any manner acquired by [Lawrence or Janice] after May 8, 2001, whether out of such monies, income or earnings or otherwise, is the separate property of [Lawrence or Janice]." The same provisions applied to debts and liabilities incurred after May 8, 2001.

In connection with the division of community property, the Stipulated Judgment awarded Janice a residence located on South Chadbourne in Los Angeles (Chadbourne residence), a residence located on Pacific Coast Highway in Malibu (Malibu residence), furniture, cash in three checking accounts, two vehicles and her personal effects. Lawrence received condominiums in Century City and Palm Springs, including furnishings; real property located in Malibu and West Hollywood; cash in two checking and savings accounts; personal effects; and the community's interest in numerous investment entities, primarily limited partnerships, including the five partnerships. With respect to the investment entities, the Stipulated Judgment awarded to Lawrence as his separate property "[a]ny corporation, limited liability company, partnership, limited partnership, joint venture, trusts or other entity in which Respondent owns or ever owned or is alleged to have owned or ever owned an interest, or which he operated or managed, or which he is alleged to have operated or managed (collectively, a 'Venture'), whether directly or indirectly, and whether or not Petitioner had an interest therein, and all

properties or assets (whether real, personal, tangible, intangible or otherwise) of any such Venture, excluding the Chadbourne and Malibu properties which are awarded to Petitioner." Correspondingly, Lawrence received "[a]ll of the parties' interests in and to the Entities and Ventures as listed hereinabove, together with contingent rights and claims relating thereto, subject to all existing debts and liabilities relating thereto. Respondent shall use his best efforts, and take affirmative steps, to remove Petitioner's name from all Entities and Ventures and have her name removed from any loans relating to them, to the extent applicable."

The Stipulated Judgment required Lawrence to pay child support of $8,000 per month and to pay for several specified expenses for the two children, including health insurance and school tuition. It also required Lawrence to pay tax-free spousal support in the amount of $350,000 per year for 10 years. In addition to spousal support, Lawrence was required to pay off or remove a number of liens against the Chadbourne residence and the Malibu residence. "To compromise and settle all community property rights and claims of the parties, and to fully settle and resolve all community property claims, rights and issues," Lawrence paid Janice a $1,350,000 one-time equalizing payment in addition to spousal support. Janice agreed to waive her right to past due child and spousal support.

The Stipulated Judgment included provisions requiring Lawrence to defend and indemnify Janice for, and hold her harmless against, "any and all claims, losses, liabilities, costs, judgments and expenses . . . arising out of, related to or in connection with" any matter including "any contract, note, indenture, trust deed, mortgage, pledge, security instrument, indemnity or other agreement" executed by or on behalf of any venture defined in paragraph No. 4.B.(6) of the Stipulated Judgment, and Lawrence's "failure to pay any taxes required to be paid by [him] pursuant to the provisions of this Stipulated Further Judgment." Elsewhere, the Stipulated Judgment provided: "No party shall be liable for any debt or obligation incurred by the other unless said debt/obligation is specifically assigned to her/him pursuant to the terms and provisions of this Stipulated

Further Judgment. Each party shall indemnify and hold the other party free and harmless from any debt incurred by the other after their date of separation."

Under the heading "Miscellaneous Provisions," the Stipulated Judgment provided in paragraph No. 18.B. as follows: "PAYMENT OF TAXES ON ASSETS RECEIVED [¶] (1) Except as otherwise specifically provided hereinabove, the party receiving specific property as a result of the terms of this Stipulated Further Judgment shall pay all taxes assessed against such property, and all costs related thereto, that are payable after July 3, 2003. Petitioner has acknowledged that by reason of the provisions of this paragraph she will be liable for the payment of all taxes on any gain that may ultimately result from the sale of the Chadbourne and Malibu Residences. [¶] (2) Petitioner shall not increase her basis in the Chadbourne and Malibu Residences by reason of the payments received by her pursuant to the terms and provisions of this Stipulated Further Judgment. [¶] (3) Respondent has acknowledged that by reason of the provisions of this paragraph he will be liable for the payment of all taxes on any gain that may ultimately result from the sale of all property awarded to him pursuant to this Stipulated Further Judgment."

The next section of the Stipulated Judgment, captioned "INCOME TAX RETURNS," provided that the parties were to file joint returns for the calendar years 2001 and 2002, with Lawrence expressly agreeing to indemnify and hold Janice harmless from any liability in connection with the 2002 returns. For calendar year 2003 and forward, the parties each agreed that they would "file separate returns and each shall be solely responsible for any tax upon her/his respective earnings and income."

One of the additional "MISCELLANEOUS PROVISIONS" stated that the parties "acknowledged that there are no community debts and obligations due and owing by the parties, or either of them, not otherwise allocated or awarded pursuant to the Marital Settlement Agreement and this Stipulated Further Judgment. In the event there are community obligations or other obligations not otherwise allocated or awarded pursuant to the Marital Settlement Agreement and this Stipulated Further Judgment, the party who

incurred such obligation(s) shall assume full responsibility to discharge said obligation(s) and shall indemnify and hold the other party free and harmless therefrom."

The Stipulated Judgment further provided that it and the preliminary and final declarations of disclosure would remain private and confidential so long as Lawrence was not in default of his obligations to Janice pursuant to the terms of the Stipulated Judgment. For defaults other than the payment of child support, the Stipulated Judgment provided that if Lawrence had not cured the default within 30 days or applied to court within the 30-day period for additional time to cure, then Janice could file the Stipulated Judgment. The 30-day cure period did not apply if the action period exceeded 30 days.

Postjudgment Proceedings.

In October 2004, Janice received a series of Schedule K-1's for the five partnerships, which allocated to her a percentage of the partnerships' income or loss for the period January through July 2003 on the basis of her community property interest. Initially, the Schedule K-1's for the partnerships allocated the entire tax liability to Lawrence. The Schedule K-1's were changed to apportion one-half of the tax liability to Janice after Lawrence and one of his accountants, William Broder, had discussed how best to minimize Lawrence's tax liability. Records confirmed that the five partnerships received distributions in the form of proceeds from the sale of real property between December 2002 and May 2003. Janice never received the distributions, or any portion thereof, reflected in the Schedule K-1's. In January 2005, Janice's accountants informed her of an Internal Revenue Service (IRS) notice indicating that Janice was subject to backup withholding for her failure to report any of the Schedule K-1 distributions on her 2003 tax return.[3]

In November 2005, Janice moved for a finding that Lawrence was in default of the Stipulated Judgment for the failure to pay the tax liability on distributions from the five

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[3] Evidence of the backup withholding requirement is in the form of a letter to Janice from Bear, Stearns Securities Corporation that refers to a January 3, 2005 IRS notice. Janice never directly received the referenced IRS notice, nor is there any indication in the record that Bear, Stearns ever provided it to her.

partnerships. She sought an order that Lawrence be required to pay all taxes and penalties—then calculated by her accountants to be $459,000—in addition to an order that Lawrence be required to pay her $1,176,330, which was one half of the $2,352,660 in partnership distributions reflected on the Schedule K-1's. She also asserted that Lawrence breached his fiduciary duty by failing to disclose the partnership transactions and the distributions he received therefrom prior to entry of the Stipulated Judgment, and requested sanctions.

Lawrence opposed the motion, asserting that the Stipulated Judgment required each party to pay his or her own tax liabilities through July 3, 2003 and that he had adequately disclosed his partnership interests.

The parties conducted extensive discovery in connection with the motion and brought multiple motions seeking to obtain and preclude certain types of discovery. In her reply memorandum, Janice relied on newly obtained discovery to support her contention that Lawrence neither informed her of the partnership transactions, nor had she learned of the transactions from any other source prior to signing the Stipulated Judgment.

In February 2006, Lawrence also moved for an order requiring Janice to sign amended 2002 tax returns. In addition, he moved for an order to set aside the Stipulated Judgment on the ground that the parties lacked any meeting of the minds concerning the disputed tax liability. Janice also sought an accounting of all monies received by Lawrence from the date of separation to the date of dissolution.

After several continuances, the trial court heard the motions and thereafter issued a tentative statement of decision on August 28, 2006. The parties submitted objections, and the trial court issued its final statement of decision on November 13, 2006. The trial court ruled that a preponderance of the evidence established Lawrence was in default of the Stipulated Judgment and that it should therefore be filed and entered. It further ruled, however, that the evidence did not establish Lawrence had breached his fiduciary duty to Janice.

With respect to the finding of default, the trial court determined that paragraph No. 18.B.(1) of the Stipulated Judgment required Lawrence to pay all taxes resulting from the sale of real property by limited partnerships awarded to him as his separate property and rejected the notion that any other provision of the Stipulated Judgment qualified that requirement. It further ruled that Lawrence failed to meet his burden to show that he entered into the Stipulated Judgment as a result of any mistake concerning tax liability, finding that the judgment was clear and unambiguous that Lawrence was responsible to pay all 2003 taxes on assets awarded to him. It did, however, order Janice to sign the amended 2002 tax returns.

On the basis of these findings, the trial court determined that Lawrence was responsible to pay all taxes, penalties and interest on amounts which the Schedule K-1's had allocated to Janice. It ruled: "The parties are ordered to meet and confer and determine the precise manner in which the amount of taxes, interest, penalties, and other payments should be made. The parties should consult their tax experts to determine a method that is able with the lowest total payment to pay the taxes owed on the income produced from the subject partnerships. This determination should be made within 60 days and payment of all taxes and payments must be made within the next 120 days." It further ordered that Lawrence would hold Janice harmless for all amounts ultimately charged to be due by any government entity as a result of the failure to pay taxes due in 2004.

The trial court ruled the preponderance of the evidence showed that Lawrence had complied with his fiduciary duties under Family Code sections 721, 1100, subdivision (e), 1101 and 2102. It found that Lawrence disclosed his interest in the five partnerships in the December 2002 Final Disclosure and that there was no evidence the values were incorrect when made. With respect to the Reeves Estates property, the trial court found that Janice was on actual or at a minimum inquiry notice of the real property sale as of March 2003, before she entered into the Stipulated Judgment. It further found that Janice was aware Lawrence routinely sold properties in the course of his business and that because "the nature of Respondent's business includes a multiplicity of

transactions that are always in different degrees of development . . . Petitioner would be expected to, by an exercise of reasonable care prior to the finalization of a settlement agreement, obtain and document a full and complete update of the investments that were in Respondent's control." The trial court further found no breach of fiduciary duty in connection with Lawrence's reliance on the information contained in his 2002 tax returns for disclosure provided in April 2003 or his involvement in the preparation of the Schedule K-1's apportioning one-half of the partnership distributions to Janice. Finally, the trial court found that the sales of real property neither constituted a material change that would have a triggered a duty to disclose, nor caused any detrimental impact to Janice's one-half interest in the community estate.

Enforcement of Postjudgment Rulings.

Lawrence immediately filed a notice of appeal and sought an order preventing the filing of the Stipulated Judgment pending appeal. The trial court issued an order acknowledging the automatic stay provisions of Civil Code section 916. Both he and Janice subsequently appealed from the trial court's February 9, 2007 order implementing the statement of decision.

Beginning in September 2006, Janice endeavored to meet and confer, as directed by the trial court, to determine Lawrence's tax liability. In May 2007, Lawrence responded that the matter had been stayed pending appeal and that, in any event, experts for both parties had previously offered opinions as to the amount of tax liability.

In June 2007, Janice moved for an order directing Lawrence to pay her $616,090 for her tax liability and imposing sanctions for his failure to meet and confer as directed by the trial court. In support of the motion, she submitted the declaration of one of her accountants, Edward Lieberman, who calculated that the 2003 tax amount owing as of June 9, 2007, including interest and penalties, was $616,090, plus an additional $187.41 per day in interest and penalties after that date. Lawrence opposed the motion on the ground that his notice of appeal stayed enforcement of the trial court's order.

Following a July 30, 2007 hearing, the trial court granted Janice's motion unless Lawrence posted an undertaking within 21 days. The trial court reasoned that its prior

order to meet and confer to determine the precise amount of taxes owed by Lawrence was an order "'for money or the payment of money'" constituting an exception to the automatic stay provisions of Civil Code section 916.[4] It further ruled that the "'meet and confer'" requirement was merely ancillary to the payment of money and that the order need not have directed the payment of a fixed amount to be exempt from the stay provisions. The trial court imposed sanctions in the amount of $7,610 for Lawrence's failure to meet and confer. Lawrence separately appealed from the July 2007 order. We denied Lawrence's petition for writ of supersedeas seeking to stay enforcement of the order.

In November 2007, we consolidated all appeals.

DISCUSSION

Lawrence makes three challenges on appeal. He contends the trial court erred in construing the Stipulated Judgment to require him to pay taxes on distributions from real estate sales occurring prior to the date of dissolution, in ordering that the Stipulated Judgment be filed by reason of his default and in ruling the order requiring him to pay taxes was not automatically stayed following his filing a notice of appeal. Janice challenges only the trial court's failure to find that Lawrence breached his fiduciary duty.

I. Lawrence's Appeal.

A. The Stipulated Judgment Required Lawrence to Pay Taxes on Assets He Received as His Separate Property.

The trial court ruled that paragraph No. 18.B.(1) of the Stipulated Judgment required Lawrence to pay all taxes owed from real property sales conducted in the first half of 2003 by partnerships awarded to Lawrence in July 2003. It rejected Lawrence's argument that the provision was qualified by paragraph No. 18.B.(5), which required the

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[4] The trial court's order initially specified the amount of taxes then determined to be owed as $938,471.87, which should have been the amount of the required bond. The parties later stipulated to correct the order.

parties to be individually responsible for taxes on earnings and income in 2003 and beyond. It likewise rejected the related argument that any gains from the partnership sales constituted income within the meaning of the Stipulated Judgment. Finally, it determined that the taxes were "payable" notwithstanding the lack of formal action by the IRS.

A marital settlement agreement incorporated in a judgment of dissolution is construed under the statutory rules governing contract interpretation. (Civ. Code, § 1635; *In re Marriage of Iberti* (1997) 55 Cal.App.4th 1434, 1439.) According to those rules, "'the mutual intention of the parties at the time the contract is formed governs interpretation. (Civ. Code, § 1636.) Such intent is to be inferred, if possible, solely from the written provisions of the contract. (*Id.*, § 1639.) The "clear and explicit" meaning of these provisions, interpreted in their "ordinary and popular sense," unless "used by the parties in a technical sense or a special meaning is given to them by usage" (*id.*, § 1644) controls judicial interpretation. (*Id.*, § 1638.)'" (*Bay Cities Paving & Grading, Inc. v. Lawyers' Mutual Ins. Co.* (1993) 5 Cal.4th 854, 867 (*Bay Cities*).) The terms of the contract are construed by objective criteria, meaning the question to be resolved is what the parties' written expressions of intent would lead a reasonable person to believe. (*Winograd v. American Broadcasting Co.* (1998) 68 Cal.App.4th 624, 632.) "Extrinsic evidence of the parties' intentions is inadmissible to vary, alter, or add to the terms of an unambiguous agreement. [Citations.]" (*In re Marriage of Iberti*, *supra,* at p. 1440.) Similarly, "evidence of the undisclosed subjective intent of the parties is irrelevant to determining the meaning of contractual language." (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166, fn. 3, accord, *Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 690 ["The true, subjective, but unexpressed intent of a party [to an agreement] is immaterial and irrelevant"].)

"Equally important are the requirements of reasonableness and context. . . . '[L]anguage in a contract must be construed in the context of that instrument as a whole, and in the circumstances of that case, and cannot be found to be ambiguous in the abstract.' [Citations.]" (*Bay Cities, supra*, 5 Cal.4th at p. 867, italics omitted.) "Further,

if possible, the court should give effect to every provision of the contract. [Citation.]" (*People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 Cal.App.4th 516, 526.) Courts should avoid an interpretation which ignores a provision of a contract or renders part of the contract surplusage. (*National City Police Officers' Assn. v. City of National City* (2001) 87 Cal.App.4th 1274, 1279.)

The interpretation of a contract is subject to de novo review where the interpretation does not turn on the credibility of extrinsic evidence. (*Morgan v. City of Los Angeles Bd. of Pension Comrs.* (2000) 85 Cal.App.4th 836, 843; *In re Marriage of Iberti, supra*, 55 Cal.App.4th at p. 1439.) Keeping the foregoing principles in mind, our independent review of the Stipulated Judgment demonstrates that the parties intended for Lawrence, alone, to bear the responsibility for taxes on the 2003 gains generated from assets awarded to him upon dissolution. Multiple provisions of the Stipulated Judgment compel this conclusion.

Paragraph No. 4 of the Stipulated Judgment set forth the parties' division of community property. Lawrence was awarded the five partnerships. In turn, paragraph No. 18 of the Stipulated Judgment as cited by the trial court provided in pertinent part: "Except as otherwise specifically provided hereinabove, the party receiving specific property as a result of the terms of this Stipulated Further Judgment shall pay all taxes assessed against such property, and all costs related thereto, that are payable after July 3, 2003. [Janice] has acknowledged that by reason of the provisions of this paragraph she will be liable for the payment of all taxes on any gain that may ultimately result from the sale of the Chadbourne and Malibu residences." Though taxes "assessed" against a property would, at first blush, appear to refer to property taxes, the next sentence in paragraph No. 18 demonstrates that the parties intended for the provision to apply to taxes on gains resulting from real property sales. (Civ. Code., § 1644 ["The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed"].) Nothing in the Stipulated Judgment suggests the parties intended to

differentiate between gains from the sale of the Chadbourne and Malibu residences and gains from the sale of real property owned by partnerships awarded to Lawrence.

To avoid the effect of this provision, Lawrence points to a subsequent provision, paragraph No. 18.C.(5), which stated that for calendar year 2003 and forward, the parties each agreed that they would "file separate returns and each shall be solely responsible for any tax upon her/his respective earnings and income." He contends that this provision demonstrates the parties intended to share the tax liability on gains resulting from partnership real property sales occurring in 2003. The trial court expressly rejected this argument on the grounds that paragraph No. 18.B.(5) it did not constitute an exception "specifically provided hereinabove" as required by paragraph No. 18.B.(1), and that it pertained to income and earnings, as opposed to gains from real property sales.

We agree that the Stipulated Judgment's requiring the parties to file separate tax returns in 2003 did not render Janice liable for taxes on partnership gains. Elsewhere, paragraph No. 4 of the Stipulated Judgment expressly provided that Lawrence's separate property interest in the five partnerships included both rights and liabilities, stating that Lawrence was awarded "[a]ll of the parties' interests in and to the Entities and Ventures as listed hereinabove, together with contingent rights and claims relating thereto, subject to all existing debts and liabilities relating thereto." Correspondingly, paragraph No. 8 required Lawrence to defend, indemnify and hold Janice harmless against "any and all claims, losses, liabilities, costs, judgments and expenses . . . arising out of, related to or in connection with" any matter including "any contract, note, indenture, trust deed, mortgage, pledge, security instrument, indemnity or other agreement" executed by or on behalf of any venture defined in paragraph No. 4.B.(6) of the Stipulated Judgment.[5]

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[5] We deny Lawrence's request for judicial notice of a series of complaints that were filed against various partnerships after entry of the Stipulated Judgment and were not presented to the trial court. A reviewing court may, but need not, take judicial notice of matters not before the trial court. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.) Though Lawrence correctly cites the principle of law that a party's conduct subsequent to the formation of a contract may be considered to determine the meaning of disputed contractual terms (e.g., *Cedars-Sinai Medical Center v. Shewry*

These provisions evinced an intent to require the recipient of specific property to bear the burden of any liabilities attendant to that property. (See, e.g., Fam. Code, § 2551 ["For the purposes of division and in confirming or assigning the liabilities of the parties for which the community estate is liable, the court shall characterize liabilities as separate or community and confirm or assign them to the parties in accordance with Part 6 (commencing with Section 2620)"].)

We reject Lawrence's contention that paragraph No. 18.B.(1) must be construed to apply only to postdissolution transactions. He cites *In re Marriage of Harrington* (1992) 6 Cal.App.4th 1847 as espousing the general principle that each party in a dissolution proceeding is responsible for any income taxes incurred on capital gains resulting from a real property sale occurring during those proceedings. But that case involved a more specific situation not at issue here; the question was whether the trial court was required to distribute tax liability for capital gains on a primary residence "to account for the possibility that either spouse may or may not be able to postpone recognition of capital gains taxes by purchasing a replacement residence within two years." (*Id*. at pp. 1851–1852.) The court ruled that an equal distribution was appropriate, notwithstanding some level of uncertainty as to what each party's ultimate tax liability might be. (*Id.* at p. 1851.) The other case cited by Lawrence, *In re Marriage of Davies* (1983) 143 Cal.App.3d 851, 856-857, concerned the question of the trial court's discretion to distribute liability for capital gains tax on the sale of the family residence: "In cases where proceeds of the [family residence] sale will be unequally distributed in order to equalize the uneven division of other community assets, each party is responsible for one-half of all the taxes incurred by virtue of the sale, regardless of each party's actual share in the sale proceeds, unless the trial court chooses to award to one party all of the tax liability actually incurred to further offset the division of other community assets."

(2006) 137 Cal.App.4th 964, 983), we fail to see how Lawrence's defense of those complaints in 2004 through 2007 has any bearing on the question of whether he intended to assume or share the 2003 tax liability of the partnerships.

Neither of these authorities undermines the ability of parties to a dissolution proceeding to agree to a particular award of tax liability on predissolution transactions.

Here, Lawrence and Janice unambiguously agreed that the party awarded a separate property interest in community property received that property subject to any outstanding liabilities. In addition to the foregoing provisions, paragraph No. 18.B.(3) of the Stipulated Judgment provided: "Respondent has acknowledged that by reason of the provisions of this paragraph he will be liable for the payment of all taxes on any gain that may ultimately result from the sale of all property awarded to him pursuant to this Stipulated Further Judgment." Tellingly, this paragraph referred only to "gain" that may ultimately result; the term "sale" was not qualified as necessarily occurring in the future. Taken together, the provisions of the Stipulated Judgment point to only one conclusion—the same one reached by the trial court that "Respondent took the subject properties subject to the tax and other liabilities associated with the operations of the partnerships including tax obligations." Lawrence, alone, was responsible to pay taxes on the distributions reflected on the 2003 Schedule K-1's prepared for the five partnerships.

B. The Trial Court Properly Ordered the Stipulated Judgment Filed by Reason of Lawrence's Failure to Pay Taxes.

Lawrence further argues that, regardless of any liability for taxes on the partnership gains, the trial court erred in permitting that the Stipulated Judgment be filed by reason of his failure to pay those taxes. Because the trial court's ruling involved interpreting the default provision of the Stipulated Judgment, we review the ruling de novo. (*Roden v. AmerisourceBergen Corp.* (2007) 155 Cal.App.4th 1548, 1561.) We find no error.

The Stipulated Judgment specified the conditions under which Janice would be entitled to file it. Paragraph No. 18.E.(2) of the Stipulated Judgment provided that it would be filed only when the judgment provided for such a right. The following section, paragraph No. 18.E.(3) provided that the Stipulated Judgment would remain private and confidential "[s]o long as Respondent is not in default of his obligations to Petitioner pursuant to the Marital Settlement Agreement and this Stipulated Further Judgment . . . ."

Paragraph No. 18.E.(4) stated that the Stipulated Judgment would not be filed unless Lawrence failed timely to pay child support, spousal support or school tuition and had been given a five-day period to cure his default. The same paragraph then continued: "In case of any other failure by Respondent to pay or perform hereunder and Respondent has failed to cure the same within a thirty (30) day period (provided, however, that Respondent may apply to the Court, within said thirty (30) day period, for additional time to cure said default, upon good cause shown to the Court), Petitioner may file said Stipulated Further Judgment."

Finally, paragraph No. 18.E.(6) of the Stipulated Judgment specified the procedures that Janice was required to follow in order to file the Stipulated Judgment because of Lawrence's uncured default: "In the event Petitioner seeks to have the Stipulated Further Judgment filed by reason of a default of the Respondent, for the reasons stated in the Marital Settlement Agreement and this Stipulated Further Judgment, Petitioner shall give Respondent statutory *ex parte* notice of her request for the Court to do so. Respondent shall not oppose such *ex parte* application except on the basis that he is not in default. Upon such an *ex parte* application and upon finding that Respondent is in default as specified herein as grounds to enter the Stipulated Further Judgment, the Court shall issue an order permitting Petitioner to file this Stipulated Further Judgment and request that it be signed and placed in the Court file."

In compliance with these provisions, Janice sought a finding that Lawrence was in default of the Stipulated Judgment for the failure to pay the tax liability as required by that judgment.[6] The trial court ruled that Lawrence was in default of the Stipulated Judgment for his failure to pay taxes as required by paragraph No. 18.B.(1), and on that basis concluded: "Since Respondent did not pay all of the taxes assessed as a result of the sale of the Reeves real property, he is in default of paragraph No. 18.B.(1). The FSJ

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[6] Janice initially brought an ex parte application, as directed by the Stipulated Judgment, but the trial court ordered that the matter of Lawrence's default be heard simultaneously with Janice's motion seeking enforcement of the Stipulated Judgment.

[Stipulated Judgment] must be filed and entered and the court hereby orders that the clerk file and enter the FSJ forthwith."

The Stipulated Judgment did not define the term "default." "Broadly, a 'default' is '[t]he omission or failure to perform a legal or contractual duty . . . .' (Black's Law Dict. (7th ed. 1999) p. 428.)" (*English v. IKON Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 143.) As discussed above, the Stipulated Judgment imposed a duty on Lawrence to pay taxes on the gains generated by the five partnership sales. The Stipulated Judgment further required Lawrence to indemnify and hold Janice harmless for "Respondent's failure to pay any taxes required to be paid by Respondent pursuant to the provisions of this Stipulated Further Judgment." It was undisputed that Lawrence did not pay any taxes as required by the Stipulated Judgment and the trial court properly found him in default.

Lawrence's primary challenge to the trial court's order is that he was not afforded a 30-day cure period. But as the record reveals, Lawrence received notice of the tax issue in April 2005. In July 2005, Lawrence definitively declined to pay any taxes or cause the Schedule K-1's to be amended, stating through his attorney that he was "not obligated to pay, in addition, all income taxes attributable to the joint ownership by the parties of entity interests prior to July 3, 2003." At no time between July 2005 and the trial court's statement of decision in November 2006 did Lawrence ever change his position and offer to pay the taxes. Thus, the trial court properly found that Lawrence had not cured his default within 30 days as specified in the Stipulated Judgment.

We likewise find no merit to Lawrence's contention that he could not have been found in default because the IRS has not taken formal action to collect the taxes owed. The trial court rejected this argument on the ground that "[t]axes on income earned during the subject period, early 2003, are due *and payable* when taxes are due for the year 2003 (i.e. 4-04). Those taxes have been payable since the tax returns for 2003 were due to be filed." The trial court correctly determined that the Stipulated Judgment obligated Lawrence to pay taxes "payable" after July 3, 2003, without the necessity of formal action by the IRS. (See *Berylwood Investment Co. v. Graham* (1941) 43

Cal.App.2d 659, 666 ["In a technical legal sense it may be argued that a tax does not accrue until it has been assessed and becomes due; but it is also true that in advance of the assessment of a tax, all the events may occur which fix the amount of the tax and determine the liability of the taxpayer to pay it"].) But in any event, the record established that the IRS had initiated action in the form of backup withholding. According to the declaration of Janice's accountant, Edward Lieberman, Janice provided him with power of attorney to contact the IRS to address the tax issues associated with the partnership distributions reflected in Janice's Schedule K-1's. Lieberman declared: "I caused the IRS to be contacted on February 1, 2005 and learned that the IRS had imposed a backup withholding on Petitioner's income due to the fact that she did not report income from K-1's on her 2003 income tax returns and that the only way to clear up the backup withholding was to cause Petitioner to amend her 2003 tax returns and include income, gains and/or losses indicated on the K-1's or to have Respondent direct his accountant to file amended partnership tax returns for 2003 which would then reflect no income, gains or losses to Petitioner for 2003."

Because Lawrence was in default of his obligation to pay taxes as required by the Stipulated Judgment and had failed to cure his default within 30 days, the trial court properly granted Janice's application to file the Stipulated Judgment.

C. The Trial Court Properly Ordered Lawrence to Post a Bond to Stay Enforcement of the Order to Pay Taxes.

Finally, Lawrence argues that the trial court lacked jurisdiction to enter its subsequent July 2007 order requiring Lawrence to pay the taxes owing—then calculated to be $616,090 as of June 9, 2007, plus $187.41 per day in interest and penalties thereafter—or post a bond of one and one-half times that amount. In opposition to Janice's motion seeking enforcement of the trial court's prior order obligating Lawrence to pay taxes, Lawrence argued his appeal had automatically stayed enforcement of the order. The trial court ruled that the prior order was "'for money or the payment of money,'" thus constituting an exception to the automatic stay afforded by Code of Civil Procedure section 916. Because the trial court's order necessarily involved interpreting

both the judgment and the statutes governing automatic stays on appeal and the exceptions thereto, we independently review the trial court's ruling. (*Kavanaugh v. West Sonoma County Union High School Dist.* (2003) 29 Cal.4th 911, 916; *In re Marriage of Farner* (1989) 216 Cal.App.3d 1370, 1375–1376.)

The portion of the trial court's order that Janice sought to enforce required the parties "to meet and confer and determine the precise manner in which the amount of the taxes, interest, penalties, and other payments should be made. The parties should consult their tax experts to determine a method that is able with the lowest total payment to pay the taxes owed on the income produced from the subject partnerships. This determination should be made within 60 days and payment of all taxes and payments must be made within the next 120 days." The trial court ruled that this order was for the payment of money notwithstanding the ancillary requirement that the parties meet and confer and the payment was not for a fixed amount. It found that the amount of taxes owed was a figure that "can be or has been ascertained" and that therefore an undertaking was required to stay enforcement of the order pending appeal. Again, we find no error.

Subject to enumerated statutory exceptions, Code of Civil Procedure section 916, subdivision (a) provides "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby . . . ." (See *Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629 ["The trial court's power to enforce, vacate or modify an appealed judgment or order is suspended while the appeal is pending"].) The purpose of the automatic stay provision is to "protect the appellate court's jurisdiction by preserving the status quo until the appeal is decided" and it "prevents the trial court from rendering an appeal futile by altering the appealed judgment or order by conducting other proceedings that may affect it." (*Ibid*.)

"Perhaps the most common of the specified exceptions to the statutory automatic stay is . . . . the money judgment exception . . . ." (*Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1428, fn. omitted.) In pertinent part, Code of Civil Procedure section 917.1, subdivision (a) provides: "Unless an undertaking is given, the perfecting of an appeal shall not stay enforcement of the judgment or order in the trial court if the

judgment or order is for any of the following: [¶] (1) Money or the payment of money, whether consisting of a special fund or not, and whether payable by the appellant or another party to the action." (See also Code Civ. Proc., § 680.270 [for judgment enforcement purposes, defining a "money judgment" as "that part of a judgment that requires the payment of money"].) While the automatic stay provision prevents the trial court from rendering an appeal futile, the undertaking requirement prevents an appeal from rendering the trial court's order futile by "'protect[ing] the judgment won in the trial court from becoming uncollectible while the judgment is subjected to appellate review." (*Leung v. Verdugo Hills Hospital* (2008) 168 Cal.App.4th 205, 212.)

The trial court properly construed its prior order as one for the payment of money subject to the undertaking requirement set forth in Code of Civil Procedure section 917.1. Though not cited by the parties, *Smith v. Smith* (1941) 18 Cal.2d 462 is directly on point. There, in a dissolution proceeding the trial court ordered that the defendant "'authorize the broker to sell out the brokerage account, deliver the proceeds from said sale [of the family home] to plaintiff's and defendant's attorneys, and they are to choose a trustee with whom to deposit the money, said money to be used to support the plaintiff and the children.'" (*Id*. at p. 463.) Though the appellate court ruled that a different portion of the order requiring the defendant to vacate the family home was in the nature of an injunction automatically stayed pending appeal, it further ruled that the balance of the order was not stayed absent an undertaking. The court stated: "[A]n appeal was also taken from the portion of the order commanding petitioner to have his broker sell his securities and turn the proceeds over to the counsel for petitioner and Mrs. Smith to be by them delivered to a trustee who was to use the same to support the children. This order is in effect either an order for the payment of money for the support of the children, or for the delivery of personal property. In either case its enforcement would not be stayed automatically by perfecting an appeal. If it is considered an order for the payment of money an undertaking is necessary to accomplish a stay of execution [citation]." (*Id.* at p. 467.)

Importantly, the *Smith* court concluded that the challenged order was effectively one for the payment of money even though it directed the specific performance of certain

acts (the sale of a brokerage account, delivery of the proceeds and deposit with a trustee) and the amount of money to be paid was left unspecified. In short, the order was no different than the one here, which also involved some element of specific performance (meet and confer) and left the amount of the tax liability to be determined. Pursuant to Code of Civil Procedure section 917.1, an undertaking was required to stay enforcement of the order.

II. Janice's Appeal.

A. Trial Court's Ruling and Standard of Review.

In her motion seeking an order finding Lawrence in default of the Stipulated Judgment, Janice also contended that Lawrence had breached his fiduciary duty by failing to disclose the five partnership sales and the proceeds resulting therefrom. In its November 2006 statement of decision finding that Lawrence was obligated to pay any tax liability resulting from those sales, the trial court further ruled that Lawrence had not breached his fiduciary duty. It determined that Janice had knowledge of the Reeves Estates sale before she entered into the Stipulated Judgment. With respect to the remaining four partnership sales, the trial court ruled that the evidence showed Lawrence disclosed his interest in the partnerships, Janice had equal access to information and "there is inadequate evidence to meet the requisite burden of proof to a preponderance of [the] evidence to show that Petitioner ever asked for information about whether any of the properties had sold after the final declaration of disclosure."

Moreover, the trial court found that because Janice knew Lawrence's business involved the purchase and sale of real estate through various partnerships, "Petitioner would be expected to, by an exercise of reasonable care prior [to] the finalization of a settlement agreement, obtain and document a full and complete update of the investments that were in Respondent's control." Though acknowledging that Lawrence had filed an income and expense declaration in April 2003 which omitted all partnership sales, the trial court found it was reasonable for him to base those disclosures on his 2002 income tax returns. It also found credible Lawrence's statement in his declaration that if he had

wanted to defraud Janice he would not have caused Schedule K-1's to be prepared attributing to her one half of income from those partnership sales. Finally, the trial court determined that the evidence failed to show the partnership sales constituted a "material change" in the parties assets and liabilities requiring disclosure.

Although Janice urges that we independently review the trial court's statement of decision, "[a]pplication of the standards of fairness and good faith required of a fiduciary is a factual question for the trier of fact not subject to independent review." (*Biren v. Equality Emergency Medical Group, Inc.* (2002) 102 Cal.App.4th 125, 138.) We review the trial court's finding that no breach of fiduciary duty occurred for substantial evidence, resolving all conflicts and drawing all legitimate and reasonable inferences to uphold the finding if possible. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1479; *In re Marriage of Rossi* (2001) 90 Cal.App.4th 34, 40.) "However, substantial evidence is not synonymous with 'any' evidence. [Citation.] It must have ponderable legal significance and '"must be reasonable in nature, credible, and of solid value; it must actually be 'substantial' proof of the essentials which the law requires in a particular case." [Citation.]' [Citation.]" (*In re Marriage of Grinius* (1985) 166 Cal.App.3d 1179, 1185.) Guided by these principles, we find no support for the trial court's ruling.

B. Applicable Law.

Several Family Code[7] provisions address the fiduciary obligations of disclosure that govern the relationship between spouses involved in dissolution proceedings. Preliminarily, section 721, subdivision (b) provides that generally "in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other." The rights and duties that comprise that relationship include, but are not limited to: "(1) Providing each spouse access at all times to any books kept regarding a

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[7] Unless otherwise indicated, all further statutory references are to the Family Code.

transaction for the purposes of inspection and copying. [¶] (2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. . . . [¶] (3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property." (Fam. Code, § 721, subd. (b); see *In re Marriage of Walker* (2006) 138 Cal.App.4th 1408, 1427 [Corporations Code sections referenced in 2002 amendment to section 721 "impose a duty on partners to furnish each other *without demand* 'any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties'"].)

Section 1100, subdivision (e) makes these provisions applicable during dissolution proceedings, providing: "Each spouse shall act with respect to the other spouse in the management and control of the community assets and liabilities in accordance with the general rules governing fiduciary relationships which control the actions of persons having relationships of personal confidence as specified in Section 721, until such time as the assets and liabilities have been divided by the parties or by a court. This duty includes the obligation to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest and debts for which the community is or may be liable, and to provide equal access to all information, records, and books that pertain to the value and character of those assets and debts, upon request." (See *In re Marriage of Feldman, supra,* 153 Cal.App.4th at pp. 1475–1476.)

In line with these provisions, and to promote California's policy "to marshal, preserve, and protect community and quasi-community assets and liabilities" (§ 2100, subd. (a)) between the date of separation and distribution, section 2100, subdivision (c) provides that "a full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest must be made in the early stages of a proceeding for dissolution of marriage or legal separation of the parties, regardless of the characterization as community or separate, together with a disclosure of all income and

expenses of the parties." Importantly, "each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts." (§ 2100, subd. (c).) Section 2102, subdivision (a) reaffirms that continuing duty, stating: "From the date of separation to the date of the distribution of the community or quasi-community asset or liability in question, each party is subject to the standards provided in Section 721, as to all activities that affect the assets and liabilities of the other party, including, but not limited to . . . . [¶] (1) The accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, including an immediate, full, and accurate update or augmentation to the extent there have been any material changes."

To implement these provisions, each party to a dissolution proceeding is required to serve a preliminary and a final declaration of disclosure on the other. (§§ 2103–2105.) The final declaration of disclosure, due no later than 45 days before the assigned trial date, must include, among other things: "(1) All material facts and information regarding the characterization of all assets and liabilities. [¶] (2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest. [¶] . . . [¶] (4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration." (§ 2105, subd. (b).) The parties may expressly waive the disclosure requirements by executing a waiver under penalty of perjury in open court or by separate stipulation. (§ 2105, subd. (d).) The trial court must impose sanctions for a party's breach of fiduciary duty of disclosure. (§ 2105, subd. (c); see also §§ 271, subd. (a), 1101, subd. (g); *In re Marriage of Feldman, supra,* 153 Cal.App.4th at pp. 1477–1478.)

We find instructive the interpretation and application of these statutes in *In re Marriage of Feldman, supra,* 153 Cal.App.4th 1470. There, the appellate court affirmed

the trial court's imposition of sanctions against the husband, Aaron, for his failure to disclose to the wife, Elena, certain assets, transactions and business entities in his November 2003 final declaration of disclosure. During the marriage Aaron had created a number of business entities, some of which invested in and developed real estate. (*Id*. at p. 1474.) After November 2003, Elena discovered that Aaron had failed to disclose his purchase of a $1 million bond using loan proceeds; the purchase by one of Aaron's business entities of the residence in which Aaron lived (and to which he paid a disclosed lease payment); the existence of a 401(k) account; and the formation of new business entities. (*Id*. at p. 1482–1493.) While the sheer volume of nondisclosures is certainly distinguishable from the instant action, the principles relied on by the court in finding disclosure required are not.

In connection with the nondisclosure of the residence purchase, the court observed that the fact Elena had "stumbled upon the fact of the transaction" following Aaron's limited disclosure that he was leasing a residence supported a finding "that contrary to his fiduciary duty of disclosure, Aaron was attempting to *hide* or *delay* Elena's discovery of the fact that he had used possible community property assets to buy a house in which he was residing." (*In re Marriage of Feldman, supra* 153 Cal.App.4th at p. 1485.) Further, the court observed that a spouse is not under a continuing duty to inquire once it is apparent that he or she seeks information. Thus, the fact that Elena asked for Aaron's organizational charts put Aaron on notice that he had a duty to disclose that information, and "the request for sanctions was warranted because he failed, even when Elena made it clear that she desired the information, 'to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest.' (§ 1100, subd. (e).)" (*In re Marriage of Feldman, supra*, at p. 1492.) Finally, the court noted that a party's access to information is not dispositive of the question of disclosure. Thus, the fact that one spouse may inadvertently discover the other spouse's financial activities does not eliminate the duty of disclosure. "'[A] spouse who is in a superior position to obtain records or information from which an asset can be valued and can reasonably do so must

acquire and disclose such information to the other spouse' and should not expect the spouse who is not in a superior position to search for the information. [Citation.]" (*Id.* at pp. 1487–1488.)

C. Substantial Evidence Did Not Support the Trial Court's Determination that Lawrence Satisfied His Fiduciary Obligations of Disclosure.

With these principles in mind, we must conclude that substantial evidence did not support the trial court's ruling. Rather, Lawrence had a duty to disclose the five partnership transactions. Viewing the evidence in Lawrence's favor, it showed that he served his Final Disclosure on December 16, 2002, which included information about numerous limited partnership entities. Relevant here, Lawrence separately identified his percentage interests and the value of those interests in the five partnerships, declaring they had a total value $1,364,607. The Final Disclosure further identified the marital estate's net assets as totaling $6,036,232.32. Accordingly, the value of the five partnerships as disclosed by Lawrence represented approximately 23 percent of the marital estate.

The Final Disclosure did not mention that on or about October 25, 2002, the property owned by Reeves Estates went into escrow for a purchase price of $6.6 million. On December 20, 2002, Lawrence signed the grant deed for the property and escrow closed on January 7, 2003. Also during the first half of 2003, the other four partnerships issued grant deeds for the sale of real property. Between March and May 2003, the five partnerships received $2,352,660 in partnership distributions as a result of all five partnership sales. The distributions were $988,053 more than the value of the partnership interests specified in the Final Disclosure and represented an approximate 16 percent increase in the total value of the marital estate.

In his declaration submitted in opposition to Janice's motion, Lawrence averred that he verbally informed Janice "of the potential sale of the real estate asset of Reeves." In his deposition, Lawrence added that in January 2003 he told Janice the sale had closed and that he therefore had funds available to settle the dissolution action. He did not inform her of any terms of the sale, including the purchase price or the amount of the

distribution that he received. But when Janice's attorney sent a January 6, 2003 letter seeking additional documents that Lawrence should have provided to support his Final Disclosure, Lawrence's attorney expressly responded on January 8, 2003 that he was "not aware of any changes required to be made to Mr. Taylor's Final Declaration of Disclosure that was served on December 16, 2002." He wrote this notwithstanding that the escrow on the Reeves Estates property had closed the previous day.

Also in January 2003, as part of the parties' settlement negotiations, Janice sought confirmation that Lawrence would be able to satisfy a proposed equalizing payment of over $1 million. At Lawrence's request, Janice received a letter dated January 24, 2003 from Gervais at City National Bank providing that the bank was "prepared to issue an Official Check payable to Janice L. Taylor in the amount of $1,074,333.34 (US)" that same day. In connection with resurrected contempt proceedings that Janice pursued after settlement negotiations ceased, City National Bank produced a document in response to a subpoena that showed two accounts in the name of Reeves Estates held a combined balance of $2,455,436. Janice also knew at that point that Lawrence was the general partner of Reeves Estates. In his declaration, Lawrence characterized this knowledge as his "disclosure to Petitioner of the sale of the real estate by Reeves . . . ."

On March 14, 2003, the trial court froze the Reeves Estates accounts and ordered City National Bank restrained from releasing those funds. At a later contempt hearing in April 2003, Gervais testified that he could not identify the source of the funds in the Reeves Estates accounts on the basis of the subpoenaed documents, which included the document indicating the account balances attached to his letter verifying the available funds for the equalization payment. In connection with those contempt proceedings, Lawrence submitted an income and expense declaration that did not disclose any of the recent partnership transactions, but rather, was based on his 2002 income tax returns. Lawrence conceded that he was "concerned" after Janice received a court order freezing the Reeves estate accounts, and for that reason decided not to disclose any other partnership sales. Lawrence further declared that between January 1 and July 3, 2003, he was not aware that Janice or her attorneys asked him how many partnerships had sold

property or what distributions had been made. Finally, Lawrence declared that if he had wanted to defraud Janice, he would not have instructed his accountants to send her the Schedule K-1's that revealed the partnership distributions. According to Lawrence, "[t]his would be stupid. And I don't think I am that stupid."

We cannot conclude that this evidence constituted substantial evidence of Lawrence's compliance with his statutory continuing duty of disclosure. As part of each spouse's fiduciary obligations to the other, section 2100 requires each to provide a "'full and accurate disclosure of all assets and liabilities in which one or both parties have or may have an interest . . . ." (§ 2100, subd. (c).) "This disclosure duty is ongoing, as section 2100 provides that '*each party has a continuing duty to immediately, fully, and accurately update and augment that disclosure to the extent there have been any material changes* so that at the time the parties enter into an agreement for the resolution of any of these issues, or at the time of trial on these issues, each party will have a full and complete knowledge of the relevant underlying facts.' (§ 2100, subd. (c), italics added.)" (*In re Marriage of Feldman, supra*, 153 Cal.App.4th at p. 1476, fn. omitted; accord, *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 715.) Section 2102, subdivision (a)(1) similarly requires that "from the date of separation to the date of the distribution of the community or quasi-community asset or liability in question" each party is responsible for providing "'[t]he accurate and complete disclosure of all assets and liabilities in which the party has or may have an interest or obligation and all current earnings, accumulations, and expenses, *including an immediate, full, and accurate update or augmentation* to the extent there have been any material changes.'" (*In re Marriage of Feldman, supra,* at p. 1476, fn. 5.)

The evidence was undisputed that Lawrence's Final Disclosure provided specific valuations for Lawrence's interests in the five partnerships. Between the date of his Final Disclosure and the date the parties signed the Stipulated Judgment six months later, Lawrence had engaged in transactions that increased the value of those interests by $988,053. At no time did Lawrence update or augment his Final Disclosure to reflect that change in value. Despite this failure, the trial court ruled that Lawrence did not have

the burden to provide continuing disclosure. The evidence supported none of the trial court's multiple stated reasons for circumventing the requirements of sections 2100, subdivision (c) and section 2102, subdivision (a).

First, the trial court determined that Janice had actual knowledge of the Reeves Estates sale before she entered into the Stipulated Judgment, finding "Petitioner was reassured by Respondent that the cash terms of the parties' negotiated settlement could be met because the sale of the Reeves property allowed Respondent to have the cash available. Petitioner therefore knew that Reeves was sold for cash before the settlement agreement was executed or finalized." In support of this finding, the trial court relied on statements in Lawrence's declaration and deposition that he had a conversation with Janice in January 2003, reassuring her that he would be able to fund the proposed equalization payment with funds from the Reeves Estates sale. But a "conversation" in no way satisfied Lawrence's duty under section 2100, subdivision (c) "to immediately, fully, and accurately update and augment" his Final Disclosure in the event of material changes. (See also § 2102, subd. (a).) Declarations of disclosure must be made under penalty of perjury (§ 2105, subd. (a)) and the "mandatory statutory requirements cannot be waived, except in strict compliance with provisions of the statute." (*In re Marriage of Burkle* (2006) 139 Cal.App.4th 712, 745, fn. omitted.) The fact that Janice may have learned of the sale through means other than Lawrence's update and augmentation of his Final Disclosure did not excuse his compliance with the statute. (*In re Marriage of Feldman, supra,* 153 Cal.App.4th at p. 1487 [that the wife knew of an undisclosed 401(k) account because she secretly had been copying the husband's financial documents was not "in any way exonerating of Aaron's failure to disclose the information about the 401(k) account on the Schedule"].)

Moreover, Lawrence was obligated to disclose all material facts regarding "valuation" of the Reeves Estates property and sale. (§ 2105, subd. (b)(2); *In re Marriage of Varner* (1997) 55 Cal.App.4th 128, 143–145.) The evidence was undisputed that he did not inform Janice of the total purchase price or that he received $895,260 as his interest in the face of his Final Disclosure's valuation of that interest as $195,669.56.

The documents Janice obtained through the contempt proceedings did not provide her with the omitted information, as even City National Bank's Gervais was unable to identify the funds in the Reeves Estates account as being the proceeds of a real property sale. Indeed, simultaneously with his receipt of the Reeves Estates sale distribution in April 2003, Lawrence filed an income and expense declaration in which he averred he had zero net monthly disposable income. This conduct is similar to the husband's in *In re Marriage of Feldman, supra,* 153 Cal.App.4th at page 1485, where the court concluded that his partial disclosure—informing the wife he was leasing a residence but omitting that a company he owned had purchased the residence—"was inconsistent with his duty under section 1100, subdivision (e), which gave him an obligation 'to make full disclosure to the other spouse of all material facts and information regarding the existence, characterization, and valuation of all assets in which the community has or may have an interest.'"

Second, the trial court determined that Janice's knowledge of Lawrence's occupation as a real estate syndicator put her on inquiry notice of all transactions. Specifically, because Janice was deemed to know that Lawrence's real estate sales were periodic and routine events resulting in cash distributions, the trial court ruled: "[I]n the absence of any evidence that there was any faulty valuation of the partnerships at the time of disclosure, Respondent's disclosure was sufficient. . . . This finding is not based on a finding that the Respondent did not have an affirmative duty of disclosure but rather that the nature of Respondent's business includes a multiplicity of transactions that are always in different degrees of development and that Petitioner would be expected to, by an exercise of reasonable care prior to the finalization of a settlement agreement, obtain and document a full and complete update of the investments that were in Respondent's control."

Contrary to the mandate of section 2100, subdivision (c) and section 2102, subdivision (a), the trial court's finding imposed on Janice the burden of updating and augmenting Lawrence's Final Disclosure. Lawrence, not Janice, had the burden of providing updated disclosures, even though the transactions occurred as part of

Lawrence's business activity. Addressing the question of what type of business activities a spouse must disclose, the court in *In re Marriage of Feldman, supra*, 153 Cal.App.4th at page 1493 observed "that as a matter of common sense, a spouse who runs a business is not under a duty to sua sponte update every *insignificant* occurrence in the operation of a business."[8] But the court found that corporate activities including the existence of a 401(k) account, the formation of new corporate entities and loans between those entities were the type of "'material changes'" that should have been disclosed by the husband as the business owner. (*Id*. at pp. 1487–1492, 1493.)

Pertinent here, the court in *In re Marriage of Feldman* found significant that the Sunroad entities owned by the husband were privately held corporations: "Because of their privately held status, information regarding them is not available to Elena, but it is available to Aaron as a shareholder and manager of the company, giving him a duty to obtain that information in carrying out his duty to provide disclosure about community assets. [Citations]." (*In re Marriage of Feldman, supra*, 153 Cal.App.4th at pp. 1492–1493, fn. 18.) One spouse's superior access to information was also significant in *In re Marriage of Brewer & Federici* (2001) 93 Cal.App.4th 1334. There, a wife who valued one pension on the basis of an outdated statement and the other pension as unknown contended she satisfied her duty of disclosure, given that the husband failed to avail himself of information from which more accurate values could have been ascertained. (*Id*. at pp. 1347–1348.) Rejecting this contention, the court stated: "The two pension plans were the major community assets and were grossly undervalued by [the wife] Brewer. Even if Brewer did not intentionally mislead [the husband] Federici, she was in a superior position to gain access to the information from which valuations for

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[8] Though Lawrence does not expressly characterize the issue in this manner, the court in *In re Marriage of Feldman, supra*, 153 Cal.App.4th at page 1492 also rejected the argument that section 2102, subdivision (a)(2) exempted a spouse from having to disclose transactions only "outside the ordinary course of business," explaining "that provision describes the circumstances in which one spouse must disclose a postseparation business opportunity to the other spouse *prior* to the transaction so that the spouse may decide whether to participate in the opportunity."

these assets could be determined. The two pension plans were financial assets whose monetary values were easily ascertainable. There was no evidence suggesting it would have been unreasonable for Brewer to obtain current and accurate valuation information about the pension plans, both of which came from her employer. Federici was entitled to rely upon the information provided to him. [Citation.]" (*Id.* at p. 1348.) Likewise, Janice was entitled to rely on the valuation information provided by Lawrence in his Final Disclosure and April 2003 income and expense declaration, neither of which suggested that the value of his partnership interests had increased by almost $1 million while the parties were negotiating the Stipulated Judgment.

Lawrence endeavors to support the trial court's shifting the burden of inquiry to Janice, relying on the principle that a spouse who elects to forego an investigation and accept a proposed settlement may not later avoid that settlement in the absence of a misrepresentation or concealment of material facts. (*In re Marriage of Burkle, supra,* 139 Cal.App.4th at pp. 741–742.) In that case, however, the court found no authority to suggest "that, as a matter of law, Mr. Burkle was required to provide Ms. Burkle with written details about a contemplated merger—the prospect of which was known to and had been discussed previously among the parties and counsel—in order to fulfill his fiduciary duty of full and fair disclosure." (*Id.* at p. 743.) Here, on the other hand, the undisputed evidence showed the parties never discussed all five partnership transactions and the partnership distributions that Lawrence received were far more than "contemplated." Under the circumstances presented here, the burden was not on Janice to inquire. The burden at all times was on Lawrence, as he had a continuing duty to update and augment his Final Disclosure to disclose transactions he completed prior to entering into the Stipulated Judgment. (§§ 2100, subd. (c), 2102, subd. (a).)

Third, the trial court considered that there was no wrongdoing on Lawrence's part, noting the evidence did not suggest that his failure to disclose the five partnership sales

was intentional or knowing.[9] But a spouse's duties of disclosure during dissolution proceedings "arise without reference to any wrongdoing. [Citations.]" (*In re Marriage of Brewer & Federici, supra*, 93 Cal.App.4th at p. 1344.) Thus, whether Lawrence acted intentionally or merely inadvertently was irrelevant to the determination of whether he owed Janice a duty to disclose the five partnership transactions.

Fourth, the trial court ruled that the partnership sales did not constitute "any *material change* in the assets or liabilities in issue that would trigger any duty to make an update to the previously submitted information." The trial court noted that Lawrence initially valued his partnership interests at a time of rapidly rising real estate values, and thus it was to be expected that those interests would appreciate regardless of disclosure. The statutory scheme, however, contains no exception for appreciating assets. Rather, Lawrence was obligated to provide "a 'complete disclosure of all assets and liabilities.' [Citation.]" (*In re Marriage of Feldman, supra*, 153 Cal.App.4th at p. 1483 [noting that "[t]he statutory policy in favor of disclosure contains no exception for debts and assets that offset each other"].) Plainly, the change in value of the assets as a result of the five partnership sales was material, representing a 72 percent increase in the disclosed value of the five partnership interests and 16 percent increase in the total value of marital estate. Substantial evidence did not support the trial court's determination that the absence of a material change rendered disclosure unnecessary. (See *Imperial Casualty & Indemnity Co. v. Sogomonian* (1988) 198 Cal.App.3d 169, 181–182 [where the facts are undisputed, materiality is a question of law].)

Finally, the trial court declined to find that Lawrence had breached his fiduciary duty because his nondisclosure "did not in any way result in any financial loss to Petitioner . . . ." Again, *In re Marriage of Feldman, supra*, 153 Cal.App.4th at pages

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9 The trial court seemed to be persuaded that Lawrence's subsequent disclosure of the five partnership transactions via Janice's receipt of the Schedule K-1's had some bearing on the issue of disclosure. We fail to see the relevance of the Schedule K-1's in this regard, as Janice did not receive them until more than one year after she entered into the Stipulated Judgment.

1479 to 1480 is dispositive, holding there is no requirement that a spouse show harm as a prerequisite to an award of sanctions for breach of fiduciary duty. Closely analyzing the language of the statutes authorizing sanctions for a spouse's breach of fiduciary duty, together with the purpose of those statutes, the court explained: "Section 2107, subdivision (c) indicates that sanctions are to be imposed to effectuate *compliance with the laws* that require spouses to make disclosure to each other. (See § 2107, subd. (c) [referring to sanctions imposed to 'deter repetition' of conduct that 'fails to comply' with the disclosure requirements].) The statute is not aimed at redressing an actual injury. Section 271, subdivision (a) authorizes sanctions to advance the *policy* of promoting settlement of litigation and encouraging cooperation of the litigants. This statute, too, does not require any actual injury. [¶] Indeed, as expressed in section 2100, subdivision (b), the Legislature has indicated that '[s]ound public policy . . . favors the reduction of the adversarial nature of marital dissolution and the attendant costs by fostering full disclosure and cooperative discovery.' In light of this legislatively expressed intention, the authority to impose sanctions for nondisclosure is plainly aimed at effectuating the goal of reducing the adversarial nature of marital dissolution rather than at redressing any *actual harm* inflicted on the complaining spouse." (*Id.* at pp. 1479–1480.)

In sum, none of the trial court's proffered reasons excused Lawrence from his duty to disclose the existence and value of five partnership transactions by updating and augmenting his Final Disclosure. Because the evidence was insufficient to support the trial court's order finding that Lawrence owed no such duty, we reverse that order with directions to grant Janice's motion for sanctions for breach of fiduciary duty. (E.g., *Barber v. Rancho Mortgage & Investment Corp.* (1994) 26 Cal.App.4th 1819, 1842–1843.) Though the amount of sanctions is left to the discretion of the trial court, the imposition of sanctions is mandatory. "Section 2107, subdivision (c) requires the trial court to impose monetary sanctions and award reasonable attorney fees if a party fails to comply with any portion of the chapter of the Family Code that deals with spouse's fiduciary duty of disclosure during dissolution proceedings, i.e., sections 2100 to 2113.

The statute provides, 'If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust.' (§ 2107, subd. (c).)" (*In re Marriage of Feldman, supra,* 153 Cal.App.4th at p. 1477.)

DISPOSITION

The orders directing Lawrence to pay taxes, permitting Janice to file the Stipulated Judgment and imposing sanctions for Lawrence's failure to pay taxes are affirmed. The order finding that Lawrence did not breach his fiduciary duty is reversed with directions to enter a new order in favor of Janice. The matter is remanded for the trial court to determine the amount of sanctions payable by Lawrence pursuant to section 2107, subdivision (c). Janice is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.

DOI TODD

We concur:

_____, P. J.

BOREN

_____, J.

CHAVEZ